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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,694	11/25/2003	William T. Ball	5564-138B	6303
22442	7590	08/27/2007		
SHERIDAN ROSS PC 1560 BROADWAY SUITE 1200 DENVER, CO 80202			EXAMINER FETSUGA, ROBERT M	
			ART UNIT	PAPER NUMBER
			3751	
			MAIL DATE	DELIVERY MODE
			08/27/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/721,694

Applicant(s)

BALL, WILLIAM T.

Examiner

Robert M. Fetsuga

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 5,7,8 and 21-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5,7,8 and 21-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

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1. The proposed drawing correction filed on July 26, 2007 is disapproved as being inconsistent with the drawings originally filed (Fig. 3), the corrections made June 27, 2005 (Fig. 3), and the corrections made November 03, 2005 (Figs. 2 and 3). The proposed drawing corrections discussed at page 7 of the response filed July 26, 2007 would be acceptable if filed with a complying drawing amendment.

2. The disclosure is objected to because of the following informalities: Reference characters "37A", "37B", "56" and "61" lack a detailed description. Appropriate correction is required.

Applicant argues at page 7 of the response the drawing figures were previously amended to remove characters 37A, 37B and 61. However, applicant has not indicated what amendment accomplishes such, and the noted characters were certainly added by amendments dated June 27, 2005 and November 03, 2005. The discrepancy concerning numeral 56 could be obviated as noted supra.

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the subject matter set forth in the last two lines of claim 5, threads on an

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"interior diameter" set forth in claim 7, and "second annular flange" set forth in claim 21 could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

4. Claims 5, 7, 12 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 is unclear as to the relationship between the "flange" and the "face" on line 4 thereof.

Claim 7 is unclear as to the relationship between the "threads on an outer diameter", and the "threadingly engaged" feature on line 3 of claim 5.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the

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invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 5 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Rabinovich.

The Rabinovich reference discloses a system comprising: a pipe 77; a cap 82 including threads 84, a cylindrical body (col. 4 lns. 23-25) having an outer face (surface of 85 facing outward) and an annular flange (defining 85); and a membrane 87, as claimed. The initial statement of intended use (overflow, bathtub), and all other functional implications, have been considered but do not appear to impose any patentably distinguishing structure over that disclosed by Rabinovich.

7. Claims 5, 7, 8 and 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ball and Minnick.

The Ball reference discloses an overflow system comprising: a pipe 34; a cap 60 including a cylindrical body (Fig. 6) having

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an outer face (Fig. 6) and an (inner and outer) annular flange 70; and a membrane 64. Therefore, Ball teaches all claimed elements except for the provision of threads.

Although the cap of the Ball overflow system does not include threads, as claimed, attention is directed to the Minnick reference which discloses an analogous overflow system which further includes a cap 5 having threads 6. Therefore, in consideration of Minnick, it would have been obvious to one of ordinary skill in the overflow system art to associate threads with the Ball cap in order to facilitate installation.

Furthermore, Minnick teaches the obvious alternative of reversing the illustrated threading scheme (col. 3 lns. 20-22). Re claim 7, to associate threads on both the outside and inside of the pipe would have been obvious in order to enable a single pipe to be used with two different caps.

8. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

9. The grounds of rejection have been reconsidered in light of applicant's arguments, but are still deemed to be proper.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this

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action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday. The Office central fax number is 571/273-8300.

A handwritten signature in black ink, appearing to read 'Robert M. Fetsuga', with a stylized flourish at the end.

Robert M. Fetsuga  
Primary Examiner  
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